

**ASSEMBLY BILL**

**No. 1443**

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**Introduced by Assembly Member Skinner  
(Coauthors: Assembly Members Bonilla, Campos, Chesbro, Frazier,  
and Stone)**

January 6, 2014

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An act to amend Section 12940 of the Government Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1443, as introduced, Skinner. Harassment: unpaid interns.

Existing law, the California Fair Employment and Housing Act, protects and safeguards the right and opportunity of all persons to seek, obtain, and hold employment without discrimination, abridgment, or harassment on account of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status. Existing law makes these provisions applicable to employers, labor organizations, employment agencies, and specified training programs.

This bill would provide that discrimination against any person in the selection or training of that person in an unpaid internship, or the harassment of an unpaid intern, on account of the factors described above is an unlawful employment practice.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12940 of the Government Code is  
2 amended to read:

3 12940. It is an unlawful employment practice, unless based  
4 upon a bona fide occupational qualification, or, except where based  
5 upon applicable security regulations established by the United  
6 States or the State of California:

7 (a) For an employer, because of the race, religious creed, color,  
8 national origin, ancestry, physical disability, mental disability,  
9 medical condition, genetic information, marital status, sex, gender,  
10 gender identity, gender expression, age, sexual orientation, or  
11 military and veteran status of any person, to refuse to hire or  
12 employ the person or to refuse to select the person for a training  
13 program leading to employment, or to bar or to discharge the  
14 person from employment or from a training program leading to  
15 employment, or to discriminate against the person in compensation  
16 or in terms, conditions, or privileges of employment.

17 (1) This part does not prohibit an employer from refusing to  
18 hire or discharging an employee with a physical or mental  
19 disability, or subject an employer to any legal liability resulting  
20 from the refusal to employ or the discharge of an employee with  
21 a physical or mental disability, where the employee, because of  
22 his or her physical or mental disability, is unable to perform his  
23 or her essential duties even with reasonable accommodations, or  
24 cannot perform those duties in a manner that would not endanger  
25 his or her health or safety or the health or safety of others even  
26 with reasonable accommodations.

27 (2) This part does not prohibit an employer from refusing to  
28 hire or discharging an employee who, because of the employee's  
29 medical condition, is unable to perform his or her essential duties  
30 even with reasonable accommodations, or cannot perform those  
31 duties in a manner that would not endanger the employee's health  
32 or safety or the health or safety of others even with reasonable  
33 accommodations. Nothing in this part shall subject an employer  
34 to any legal liability resulting from the refusal to employ or the  
35 discharge of an employee who, because of the employee's medical  
36 condition, is unable to perform his or her essential duties, or cannot  
37 perform those duties in a manner that would not endanger the

1 employee's health or safety or the health or safety of others even  
2 with reasonable accommodations.

3 (3) Nothing in this part relating to discrimination on account of  
4 marital status shall do either of the following:

5 (A) Affect the right of an employer to reasonably regulate, for  
6 reasons of supervision, safety, security, or morale, the working of  
7 spouses in the same department, division, or facility, consistent  
8 with the rules and regulations adopted by the commission.

9 (B) Prohibit bona fide health plans from providing additional  
10 or greater benefits to employees with dependents than to those  
11 employees without or with fewer dependents.

12 (4) Nothing in this part relating to discrimination on account of  
13 sex shall affect the right of an employer to use veteran status as a  
14 factor in employee selection or to give special consideration to  
15 Vietnam-era veterans.

16 (5) (A) This part does not prohibit an employer from refusing  
17 to employ an individual because of his or her age if the law  
18 compels or provides for that refusal. Promotions within the existing  
19 staff, hiring or promotion on the basis of experience and training,  
20 rehiring on the basis of seniority and prior service with the  
21 employer, or hiring under an established recruiting program from  
22 high schools, colleges, universities, or trade schools do not, in and  
23 of themselves, constitute unlawful employment practices.

24 (B) The provisions of this part relating to discrimination on the  
25 basis of age do not prohibit an employer from providing health  
26 benefits or health care reimbursement plans to retired persons that  
27 are altered, reduced, or eliminated when the person becomes  
28 eligible for Medicare health benefits. This subparagraph applies  
29 to all retiree health benefit plans and contractual provisions or  
30 practices concerning retiree health benefits and health care  
31 reimbursement plans in effect on or after January 1, 2011.

32 (b) For a labor organization, because of the race, religious creed,  
33 color, national origin, ancestry, physical disability, mental  
34 disability, medical condition, genetic information, marital status,  
35 sex, gender, gender identity, gender expression, age, sexual  
36 orientation, or military and veteran status of any person, to exclude,  
37 expel, or restrict from its membership the person, or to provide  
38 only second-class or segregated membership or to discriminate  
39 against any person because of the race, religious creed, color,  
40 national origin, ancestry, physical disability, mental disability,

1 medical condition, genetic information, marital status, sex, gender,  
2 gender identity, gender expression, age, sexual orientation, or  
3 military and veteran status of the person in the election of officers  
4 of the labor organization or in the selection of the labor  
5 organization's staff or to discriminate in any way against any of  
6 its members or against any employer or against any person  
7 employed by an employer.

8 (c) For any person to discriminate against any person in the  
9 selection or training of that person in any apprenticeship training  
10 program or any other training program leading to employment,  
11 *including an unpaid internship*, because of the race, religious creed,  
12 color, national origin, ancestry, physical disability, mental  
13 disability, medical condition, genetic information, marital status,  
14 sex, gender, gender identity, gender expression, age, sexual  
15 orientation, or military and veteran status of the person  
16 discriminated against.

17 (d) For any employer or employment agency to print or circulate  
18 or cause to be printed or circulated any publication, or to make  
19 any nonjob-related inquiry of an employee or applicant, either  
20 verbal or through use of an application form, that expresses,  
21 directly or indirectly, any limitation, specification, or discrimination  
22 as to race, religious creed, color, national origin, ancestry, physical  
23 disability, mental disability, medical condition, genetic information,  
24 marital status, sex, gender, gender identity, gender expression,  
25 age, sexual orientation, or military and veteran status, or any intent  
26 to make any such limitation, specification, or discrimination. This  
27 part does not prohibit an employer or employment agency from  
28 inquiring into the age of an applicant, or from specifying age  
29 limitations, where the law compels or provides for that action.

30 (e) (1) Except as provided in paragraph (2) or (3), for any  
31 employer or employment agency to require any medical or  
32 psychological examination of an applicant, to make any medical  
33 or psychological inquiry of an applicant, to make any inquiry  
34 whether an applicant has a mental disability or physical disability  
35 or medical condition, or to make any inquiry regarding the nature  
36 or severity of a physical disability, mental disability, or medical  
37 condition.

38 (2) Notwithstanding paragraph (1), an employer or employment  
39 agency may inquire into the ability of an applicant to perform

1 job-related functions and may respond to an applicant's request  
2 for reasonable accommodation.

3 (3) Notwithstanding paragraph (1), an employer or employment  
4 agency may require a medical or psychological examination or  
5 make a medical or psychological inquiry of a job applicant after  
6 an employment offer has been made but prior to the  
7 commencement of employment duties, provided that the  
8 examination or inquiry is job related and consistent with business  
9 necessity and that all entering employees in the same job  
10 classification are subject to the same examination or inquiry.

11 (f) (1) Except as provided in paragraph (2), for any employer  
12 or employment agency to require any medical or psychological  
13 examination of an employee, to make any medical or psychological  
14 inquiry of an employee, to make any inquiry whether an employee  
15 has a mental disability, physical disability, or medical condition,  
16 or to make any inquiry regarding the nature or severity of a physical  
17 disability, mental disability, or medical condition.

18 (2) Notwithstanding paragraph (1), an employer or employment  
19 agency may require any examinations or inquiries that it can show  
20 to be job related and consistent with business necessity. An  
21 employer or employment agency may conduct voluntary medical  
22 examinations, including voluntary medical histories, which are  
23 part of an employee health program available to employees at that  
24 worksite.

25 (g) For any employer, labor organization, or employment agency  
26 to harass, discharge, expel, or otherwise discriminate against any  
27 person because the person has made a report pursuant to Section  
28 11161.8 of the Penal Code that prohibits retaliation against hospital  
29 employees who report suspected patient abuse by health facilities  
30 or community care facilities.

31 (h) For any employer, labor organization, employment agency,  
32 or person to discharge, expel, or otherwise discriminate against  
33 any person because the person has opposed any practices forbidden  
34 under this part or because the person has filed a complaint, testified,  
35 or assisted in any proceeding under this part.

36 (i) For any person to aid, abet, incite, compel, or coerce the  
37 doing of any of the acts forbidden under this part, or to attempt to  
38 do so.

39 (j) (1) For an employer, labor organization, employment agency,  
40 apprenticeship training program or any training program leading

1 to employment, or any other person, because of race, religious  
2 creed, color, national origin, ancestry, physical disability, mental  
3 disability, medical condition, genetic information, marital status,  
4 sex, gender, gender identity, gender expression, age, sexual  
5 orientation, or military and veteran status, to harass an employee,  
6 an applicant, *an unpaid intern*, or a person providing services  
7 pursuant to a contract. Harassment of an employee, an applicant,  
8 *an unpaid intern*, or a person providing services pursuant to a  
9 contract by an employee, other than an agent or supervisor, shall  
10 be unlawful if the entity, or its agents or supervisors, knows or  
11 should have known of this conduct and fails to take immediate  
12 and appropriate corrective action. An employer may also be  
13 responsible for the acts of nonemployees, with respect to sexual  
14 harassment of employees, applicants, *unpaid interns*, or persons  
15 providing services pursuant to a contract in the workplace, where  
16 the employer, or its agents or supervisors, knows or should have  
17 known of the conduct and fails to take immediate and appropriate  
18 corrective action. In reviewing cases involving the acts of  
19 nonemployees, the extent of the employer's control and any other  
20 legal responsibility that the employer may have with respect to the  
21 conduct of those nonemployees shall be considered. An entity shall  
22 take all reasonable steps to prevent harassment from occurring.  
23 Loss of tangible job benefits shall not be necessary in order to  
24 establish harassment.

25 (2) The provisions of this subdivision are declaratory of existing  
26 law, except for the new duties imposed on employers with regard  
27 to harassment.

28 (3) An employee of an entity subject to this subdivision is  
29 personally liable for any harassment prohibited by this section that  
30 is perpetrated by the employee, regardless of whether the employer  
31 or covered entity knows or should have known of the conduct and  
32 fails to take immediate and appropriate corrective action.

33 (4) (A) For purposes of this subdivision only, "employer" means  
34 any person regularly employing one or more persons or regularly  
35 receiving the services of one or more persons providing services  
36 pursuant to a contract, or any person acting as an agent of an  
37 employer, directly or indirectly, the state, or any political or civil  
38 subdivision of the state, and cities. The definition of "employer"  
39 in subdivision (d) of Section 12926 applies to all provisions of this  
40 section other than this subdivision.

1 (B) Notwithstanding subparagraph (A), for purposes of this  
2 subdivision, “employer” does not include a religious association  
3 or corporation not organized for private profit, except as provided  
4 in Section 12926.2.

5 (C) For purposes of this subdivision, “harassment” because of  
6 sex includes sexual harassment, gender harassment, and harassment  
7 based on pregnancy, childbirth, or related medical conditions.  
8 Sexually harassing conduct need not be motivated by sexual desire.

9 (5) For purposes of this subdivision, “a person providing services  
10 pursuant to a contract” means a person who meets all of the  
11 following criteria:

12 (A) The person has the right to control the performance of the  
13 contract for services and discretion as to the manner of  
14 performance.

15 (B) The person is customarily engaged in an independently  
16 established business.

17 (C) The person has control over the time and place the work is  
18 performed, supplies the tools and instruments used in the work,  
19 and performs work that requires a particular skill not ordinarily  
20 used in the course of the employer’s work.

21 (k) For an employer, labor organization, employment agency,  
22 apprenticeship training program, or any training program leading  
23 to employment, to fail to take all reasonable steps necessary to  
24 prevent discrimination and harassment from occurring.

25 (l) (1) For an employer or other entity covered by this part to  
26 refuse to hire or employ a person or to refuse to select a person  
27 for a training program leading to employment or to bar or to  
28 discharge a person from employment or from a training program  
29 leading to employment, or to discriminate against a person in  
30 compensation or in terms, conditions, or privileges of employment  
31 because of a conflict between the person’s religious belief or  
32 observance and any employment requirement, unless the employer  
33 or other entity covered by this part demonstrates that it has explored  
34 any available reasonable alternative means of accommodating the  
35 religious belief or observance, including the possibilities of  
36 excusing the person from those duties that conflict with his or her  
37 religious belief or observance or permitting those duties to be  
38 performed at another time or by another person, but is unable to  
39 reasonably accommodate the religious belief or observance without  
40 undue hardship, as defined in subdivision (u) of Section 12926,

1 on the conduct of the business of the employer or other entity  
2 covered by this part. Religious belief or observance, as used in  
3 this section, includes, but is not limited to, observance of a Sabbath  
4 or other religious holy day or days, reasonable time necessary for  
5 travel prior and subsequent to a religious observance, and religious  
6 dress practice and religious grooming practice as described in  
7 subdivision (q) of Section 12926.

8 (2) An accommodation of an individual’s religious dress practice  
9 or religious grooming practice is not reasonable if the  
10 accommodation requires segregation of the individual from other  
11 employees or the public.

12 (3) An accommodation is not required under this subdivision  
13 if it would result in a violation of this part or any other law  
14 prohibiting discrimination or protecting civil rights, including  
15 subdivision (b) of Section 51 of the Civil Code and Section 11135  
16 of this code.

17 (m) For an employer or other entity covered by this part to fail  
18 to make reasonable accommodation for the known physical or  
19 mental disability of an applicant or employee. Nothing in this  
20 subdivision or in paragraph (1) or (2) of subdivision (a) shall be  
21 construed to require an accommodation that is demonstrated by  
22 the employer or other covered entity to produce undue hardship,  
23 as defined in subdivision (u) of Section 12926, to its operation.

24 (n) For an employer or other entity covered by this part to fail  
25 to engage in a timely, good faith, interactive process with the  
26 employee or applicant to determine effective reasonable  
27 accommodations, if any, in response to a request for reasonable  
28 accommodation by an employee or applicant with a known physical  
29 or mental disability or known medical condition.

30 (o) For an employer or other entity covered by this part, to  
31 subject, directly or indirectly, any employee, applicant, or other  
32 person to a test for the presence of a genetic characteristic.

33 (p) Nothing in this section shall be interpreted as preventing the  
34 ability of employers to identify members of the military or veterans  
35 for purposes of awarding a veteran’s preference as permitted by  
36 law.

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